ACA
AMERICAN
COUNSELING
ASSOCIATION

May 13, 1998

The Honorable Thomas A. Daschle
Minority Leader
United States Senate
Room 221 U.S. Capitol
Washington, D.C. 20510

Dear Minority Leader Daschle:

I am writing on behalf of the American Counseling Association, the nation's largest non-profit organization representing professional counselors, to express our strong support for S. 1890, the "Patients' Bill of Rights Act of 1998."

We firmly believe that basic federal protections are needed to ensure that health plans provide care that meets at least minimum quality standards, especially in today's world in which health care is big business, and in which business interests drive the decisions. No other commercial transaction has such a direct impact on an individual's physical safety and well-being as the purchase of health care services or coverage. If any business undertaking merits government oversight and regulation, surely the business of health care insurance does.

We would like to especially express support for certain key provisions of S. 1890 which are of particular importance to professional counselors and their clients. The following specific provisions are listed in their order of appearance in the legislation.

Sec. 102. Offering of Choice of Coverage Options Under Group Health Plans;
Sec. 103. Choice of Providers;
Sec. 104. Access to Specialty Care.
In perhaps no other field of health is the quality of the consumer-provider relationship more important than in mental health care. The very personal nature of mental health treatment, counseling, and therapy makes it imperative that the patient have the ability to choose their mental health professional. Requiring plans to offer point-of-service coverage to their enrollees, even if at increased cost to the consumer, will give enrollees a crucial degree of control in accessing mental health services. Similarly, Sections 103 and 104 will help ensure enrollees have access to their provider of choice.

Sec. 113. Process for Selection of Providers Licensed professional counselors are one of five generally-recognized types of non-physician mental health professionals, including psychologists, clinical social workers, marriage and family therapists, and psychiatric nurses. While a health plan does not necessarily need to hire at least one of each type of provider, we firmly believe that plans should not

be allowed to adopt policies that arbitrarily exclude certain types of providers from their panel. Judgements regarding which professionals to hire or contract with should be made solely on the basis of the plan's need for mental health professionals and on the individual professional's expertise and qualifications.

We strongly support this section's nondiscrimination provisions, and the requirement that plans have written procedures for the selection of providers.

Sec. 115. Standards for Utilization Review Activities. Utilization review activities are at the heart of managed care plan's control over patient care, and are the mechanism typically used by plans to deny coverage or payment for certain services. Consequently, we strongly support the establishment of standards for plans' utilization review activities as provided under the legislation, and believe their adoption will help to ensure reasonable, timely, and appropriate oversight of health care service use by health plans. Our members are routinely denied coverage for treatments with little or no documentation or clinical rationale given, and are often informed of adverse coverage decisions significantly after service is provided. Enactment of this provision could help eliminate these practices.

Sec. 116. Health Care Quality Advisory Board. We support the establishment of such a board. The effective provision of health care services is certainly of sufficient importance to the public's well-being to merit ongoing oversight. A bipartisan advisory board has proven very helpful in Congress's work on Medicare, and such a board would certainly be beneficial for work on issues pertaining to the private health care sector, as well.

Sec. 122. Protection of Patient Confidentiality. As you know, legislation concerning the confidentiality of individuals' health treatment information is currently the subject of much debate within the Senate Labor & Human Resources Committee. We would simply like to take this opportunity to emphasize the importance of patient confidentiality to effective mental health treatment.

Sec. 133. External Appeals of Adverse Determinations. An effective appeals process is essential in the managed care environment, given the strong financial incentive for plans to deny access to services. We support the bill's provisions laying out minimum requirements for internal appeals processes. However, we believe that enrollees and providers should have access to an external appeals process in order to ensure appropriate access to care. An external appeals process would not be subject to undue influence on the part of the health plan, and like the threat of liability for damages provided for under Section 303 of the bill, would provide an important incentive for plans to make the right coverage decision the first time, and to conduct appropriate internal appeals processes.

Subtitle E—Protecting the Doctor-Patient Relationship

We strongly support the provisions of this subtitle. In the current health care marketplace, managed care plans have much more negotiating power than do individual health care providers, and consequently are usually able to dictate contract terms to providers, and to take unilateral action against providers. We believe it is highly inappropriate for health care providers to be held liable for the effects of health plan decisions, or to have significant or explicit financial incentives to deny services, or to limit what providers can or cannot say to their clients. It is also inappropriate for health plans to retaliate or

discriminate against health care providers who advocate for their clients, or to use arbitrary, unwritten "policies" as the basis for taking action against a provider. Unfortunately, these types of occurrences are all too frequent in the current health care marketplace.

Health care providers' overriding duty is to the patient/consumer/client. We believe that the provisions included in Section 142 are vitally important to ensuring that providers' position as patient advocates is not compromised.

Sec. 302. ERISA Preemption Not to Apply to Certain Actions Involving Health Insurance Policyholders. We find it unconscionable that while individuals can hold the makers of a childrens' toy liable for punitive and compensatory damages for harmful products, the Employee Retirement and Income Security Act (ERISA) prevents individuals from holding health plans liable for inappropriate treatment decisions which harm the patient. The ability to recover damages in these situations is one of the most important "sticks" with which to ensure that plans do not skimp on services. The fact is that health plans are making treatment decisions, and that these decisions have a significant impact — often a life-or-death impact — on plan enrollees. ERISA plans must be ultimately accountable for their actions.

In closing, we would like to reiterate our strong support for S. 1890, and especially the provisions listed above. We are hopeful that this Congress will see the enactment of legislation in this area. Please do not hesitate to contact myself or Scott Barstow of ACA's Office of Public Policy and Information (at 703 823-9800 x234) if we can be of any assistance in your work.

Sincerely,

Courtland Lee, Ph.D., NCC
President,
American Counseling Association